

RESOLUTION NO. 2018-9

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE VILLAGE AND NEUTRON HOLDINGS, INC. (D/B/A LIMEBIKE) FOR DOCKLESS BIKE SHARING SERVICES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the “Village”) desires to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility; and

WHEREAS, Neutron Holdings, Inc. (d/b/a LimeBike) (“LimeBike”) currently provides bike sharing services with its dockless bike fleet (the “Services”) within the Village pursuant to a short-term, 120-day pilot agreement with the Village; and

WHEREAS, the Village and LimeBike desire to enter into an agreement, in substantially the form attached hereto as Exhibit “A,” (the “Agreement”) to continue their relationship for long-term provision of the Services; and

WHEREAS, the Village finds that this Resolution will promote the health, safety and welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Approval.** The Village Council hereby approves the Agreement with Limebike for the Services in substantially the form attached hereto as Exhibit “A.”

Section 3. **Authorization.** The Village Manager is hereby authorized to execute the Agreement, subject to the Village Attorney's approval as to form, content and legal sufficiency.

Section 4. **Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 10th day of April, 2018.


MAYOR MAYRA PEÑA LINDSAY

ATTEST:


JENNIFER MEDINA, CMC
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY


VILLAGE ATTORNEY

EXHIBIT A

AGREEMENT

BETWEEN

THE VILLAGE OF KEY BISCAYNE

AND

NEUTRON HOLDINGS, INC. (D/B/A LIMEBIKE)

**AGREEMENT
BETWEEN
THE VILLAGE OF KEY BISCAYNE
AND**

NEUTRON HOLDINGS, INC. (D/B/A LIMEBIKE)

THIS AGREEMENT (this "Agreement") is made effective as of the 16th day of April, 2018 (the "Effective Date"), by and between the VILLAGE OF KEY BISCAYNE, FLORIDA, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (the "Village"), and NEUTRON HOLDINGS, INC. (d/b/a LimeBike) ("LimeBike") a Delaware corporation, whose principal address is 66 Bovet Road, San Mateo, California (collectively, the "Parties").

RECITALS

1. A goal of the Village is to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility.
2. Bike sharing services are a component to help the Village achieve its transportation goals and the Village desires to make bike sharing services available to residents and those who work in the Village.
3. LimeBike is a bike sharing provider and proposes to operate a bike sharing program within the Village.
4. LimeBike requests the use of certain Village property to efficiently and effectively provide bike sharing services.
5. LimeBike possess GPS, 3G, and self-locking technology in its bike fleet such that bikes may be locked and opened by users with an app and tracked to provide for operations and maintenance.
6. The use of certain Village property for bike sharing is a benefit to the residents and businesses of the Village.
7. On June 15, 2017, the Parties entered into a short-term, 120-day pilot agreement for bike sharing services.
8. The Parties desire to continue their relationship for the long-term provision of bike sharing to the Village, its residents, and its businesses.

AGREEMENT

Section 1. Operator. The Village designates LimeBike as a non-exclusive provider of dockless bike sharing services within the Village limits during the term of this Agreement. This designation is personal to LimeBike and may not be assigned or transferred to any party without the express written consent of the Village. The Village specifically reserves the right to contract with any other entity providing similar services.

Section 2. Use of Village Property. The Village authorizes LimeBike to use Village Property solely for the purposes set forth in this Agreement. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in Village Property. Within 30 days of the signing of this Agreement, the parties will mutually agree on and develop a map of public areas where rebalanced bikes will be concentrated for bike parking. Bikes utilized by the public shall be parked by users legally in public areas and bikes may not be parked on private property without prior written authorization from the property owner. Authorized designated bike parking on private property locations will also be added to the parking map. This map and location site list may be modified from time to time by mutual agreement of parties.

Section 3. Permitted Use. LimeBike may use Village Property solely for parking of bicycles owned and maintained by LimeBike for use in the bike sharing program. LimeBike shall not place or attach any personal property, fixtures, or structures to Village Property without the prior written consent of Village.

- a. Use of Village Property, and LimeBike's operations within the Village, shall, at a minimum: a) not adversely affect Village Property or the Village's streets, or sidewalks; b) not adversely affect the property of any third parties; c) not inhibit pedestrian movement within Village Property or along other property or rights-of-way owned or controlled by the Village; and d) not create conditions which are a threat to public safety and security.
- b. Upon termination of this Agreement by either party, LimeBike shall, at its sole cost and expense, immediately restore Village Property to a condition which is visually and structurally indistinguishable from the immediately surrounding area.

Section 4. Bike Parking. The Village, at its complete and own discretion, may support the bike sharing program with the installation of bike racks and/or painted bike parking spots, and recommended bike parking spots without racks or painting, in the Village sufficient to facilitate the orderly parking of bikes throughout the Village.

Section 5. Condition of Village Property.

- a. The Village makes Village Property available to LimeBike in an "as is" condition. The Village makes no representations or warranties concerning the condition of Village Property or its suitability for use by LimeBike or its customers, and assumes no duty to warn either LimeBike or its customers concerning conditions that exist now or may arise in the future.

- b. In making Village Property available for use by LimeBike, the Village assumes no liability for loss or damage to LimeBike's bikes or other property. LimeBike agrees that the Village is not responsible for providing security at any location where LimeBike's bikes are stored or located, and LimeBike hereby waives any claim against Village in the event LimeBike's bikes or other property are lost or damaged.

Section 6. Maintenance and Care of Portion of Village Property. LimeBike shall be solely responsible for: (i) maintaining Village Property to the Village standards applicable for use by LimeBike as permitted under Section 3; and (ii) obtaining any applicable permits required by the Village, the County, the State, and/or any Federal agencies. LimeBike shall exercise due care in the use of Village Property and shall be responsible for maintaining Village Property in good condition and repair. LimeBike shall not act, or fail to act, in any way that results in excessive wear or damage to Village Property. LimeBike expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of LimeBike's use of Village Property. Should LimeBike fail to repair, replace, or otherwise restore such real or personal property, LimeBike expressly agrees to pay the Village's costs in making such repairs, replacements, or restorations.

Section 7. Operations & Maintenance.

- a. For the term of this Agreement, LimeBike will be responsible for all operations and bike rebalancing. LimeBike will be responsible for responding to any bike balancing calls to Customer Service in accordance to Exhibit A.
- b. LimeBike will cover all maintenance costs for the bike fleet and maintenance to the minimum performance standard as set forth in Exhibit A.
- c. LimeBike shall have no more than 150 deployed bikes available for use in the Village at any given time. LimeBike shall not reduce or increase the amount of deployed bikes without the express, written consent of the Village Manager and/or his/her designee.
- d. The Village shall in no way be responsible for maintenance of any bikes owned or operated by LimeBike.
- e. The Village shall have final authority over the location of any of LimeBike's bikes.
- f. Although LimeBike's bikes are intended to be placed at dockless locations, LimeBike may utilize the Village's bike racks with the prior, written consent of the Village Manager and/or his/her designee. When authorized to utilize a Village bike

rack fifty percent of the rack must remain available for public access.

- g. LimeBike will refresh the bike fleet within 3 years, by introducing, for example, newer model traditional bikes.

Section 8. Indemnification. LimeBike shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from LimeBike's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between LimeBike and third parties made pursuant to this Agreement. LimeBike shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from LimeBike's performance or non-performance of this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this section shall survive termination of this Agreement.

Section 9. Insurance. LimeBike shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of LimeBike's insurance and shall not contribute to LimeBike's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 9 and may be increased by the Village as it deems necessary or prudent.

Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of LimeBike shall be allowed to provide services

pursuant to this Agreement who is not covered by Worker's Compensation insurance.

Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

Certificate of Insurance. Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services on any Project. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. LimeBike shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

Additional Insured. Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of LimeBike in performance of this Agreement. LimeBike's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to LimeBike's insurance. LimeBike's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

Deductibles. All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. LimeBike shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

The provisions of this section shall survive termination of this Agreement.

Section 10. Compliance with Law. LimeBike, at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of Village Property and the operation of its bike sharing program, including but not limited to laws governing operation of bicycles. The Village shall reasonably cooperate with LimeBike, at no additional cost to the Village, such that LimeBike can properly comply with this Section and be allowed to use Village Property as specified in Section 3, above.

Section 11. Required Reports. LimeBike shall provide reports to the Village concerning utilization of its bikes and bike route usage not less than quarterly, and shall cooperate with the Village in the collection and analysis of aggregated data concerning its operations.

Section 12. Independent Contractor; No Joint Venture. LimeBike and its employees, contractors, subcontractors, officers, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Agreement.

Section 13. Term.

- a. Term of Agreement: The term of this Agreement shall be for one (1) year, commencing April, 202018 ("Initial Term").
- b. Extension of Agreement: Upon the expiration of the Initial Term, and provided that LimeBike is not in default of this Agreement, this Agreement shall automatically renew on an annual basis for up to a maximum of two (2) additional one-year renewal terms.

Section 14. Termination. This Agreement may be terminated by the Village with or without cause by providing written notice from the Village to LimeBike with at least seven (7) days' notice to LimeBike of such termination.

Section 15. Most Favored Nation. If during the term of this Agreement, LimeBike enters into an agreement with another municipality or county ("Other Governmental Entity"), the terms of which agreement include direct or indirect compensation to the Other Governmental Entity, then upon written request of the Village, LimeBike shall

negotiate and enter into a new agreement with the Village which shall include the more favorable compensation terms extended to the Other Governmental Entity. LimeBike shall notify the Village within 30 days if it enters into an agreement with an Other Governmental Entity that has more favorable terms than this Agreement and the Village shall have the right to receive the more favorable terms immediately.

Section 16. Entire Agreement; Amendment. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.

Section 17. Applicable Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

Section 18. Counterparts. This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 19. Reporting. In addition to the general reporting requirements outlined in Exhibit A, not later than 120 days following the date this Agreement is approved by the Village Council, LimeBike shall furnish the Village Manager and Village staff with a report that includes, but is not limited to, total number of program riders, number of rides, average rides per bike per day, number of bikes non-operational over the Term, and total Customer Support call and responsiveness metrics.

Section 20. Attorneys' Fees and Waiver of Jury Trial. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

Section 21. Nondiscrimination. During the term of this Agreement, LimeBike shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

Section 22. **Notice.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: John C. Gilbert
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Chad Friedman, Esq.
Village Attorney
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For LimeBike Toby Sun
LimeBike
66 Bovet Drive, Suite 320
San Mateo, CA 94402

Section 23. Public Records. LimeBike understands that the public shall have access, at all reasonable times, to all documents and information pertinent to this Agreement, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Village and the public to all documents subject to disclosure under applicable law. For purposes of this section, the term: (a) “Contractor” means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2); and (b) “Public agency” means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law. In addition to other contract requirements provided by law, LimeBike shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession

of LimeBike upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. LimeBike's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

NOTICE PURSUANT TO
SECTION 119.0701(2)(a), FLORIDA STATUTES

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Jennifer Medina, CMC, Village Clerk
Mailing address: 88 West McIntyre Street, Key Biscayne, FL 33149
Telephone number: 305-365-5506
Email: jmedina@keybiscayne.fl.gov

Section 24. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

Section 25. Waiver. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

Section 26. No Third Party Beneficiaries. It is the intent and agreement of the Parties that this Agreement is solely for the benefit of the Parties and no person not a party hereto shall have any rights or privileges hereunder.

Section 27. Authority. Each party represents and warrants that the representative signing this Agreement on its behalf has all right and authority to bind and commit that Party to the terms and conditions of this Agreement.

Section 28. Survival of Provisions. Any terms or conditions of this Agreement that require acts beyond the date of the term of this Agreement shall survive termination

of this Agreement and shall remain in full force and effect unless and until the terms or conditions are completed.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

FOR LIMEBIKE:

NEUTRON HOLDINGS, INC., a Delaware corporation

District of Columbia: SS

Subscribed and sworn to before me, in my presence,

this 20 day of APRIL, 2018

Witness:

AZADEH MIRI
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 14, 2022

Azadeh Miri, Notary Public, D.C.

My commission expires June 14, 2022.

Print: AZADEH MIRI

Name: Weiyao Sun, CEO / Todd Boyle, Director

Date Executed: 4-20-18

FOR THE VILLAGE:

VILLAGE OF KEY BISCAIYNE, a Florida municipal corporation

Attest:

Jennifer Medina
Jennifer Medina, Village Clerk, CMC

John C. Gilbert
John C. Gilbert, Village Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency

Al Furin
Weiss Serota Helfman Cole & Bierman, P.L.

Village Attorney

Exhibit A

Description of LimeBike's Services

LimeBike has built the operations standards below with performance indicators that best represents its model of dockless bike sharing. LimeBike will report on these metrics that help the Village measure LimeBike's success serving its citizens and improving the livability/mobility of the Village. LimeBike will maintain its bikes to be in an excellent state of cleanliness and repair, with a minimum of 90% of deployed bikes operable at any time.

Performance Indicator	Description	Measurement Tool	Minimum Performance Standard	Reporting Frequency
App & customer service support portal	LimeBike reservation system fully operational	Uptime reporting	99.5% uptime	quarterly
Bicycle distribution	Maps identifying trends in peak bike distribution	Maps showing aggregate usage patterns	Fleet will focus on serving the island of Key Biscayne	quarterly
Bicycles in service	# of bikes in service	Daily uptime reports	Deploy and maintain 150 bicycles in service in any calendar month. Total number of bikes may be decreased or increased in the future by mutual consent.	quarterly
Report-responsive	LimeBike response time to resolve call to Customer Service. Report time of improper bike parking / other problems communicated to Village staff	Time relative to report logs	Within two (2) hours during business hours between 8 am to 8 pm Monday through Friday except for State and Federal holidays. For any complaint outside of business hours, within two hours (2) of start of business hours.	quarterly